

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AFFY TAPPLE, LLC¹

Employer

and

INTERNATIONL BROTHERHOOD OF TEAMSTERS, LOCAL 777, AFL-CIO

Petitioner

Case 13-RC-21000

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. No question of affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)((7) of the Act, for the following reasons:

The International Brotherhood of Teamsters, Local 777, AFL-CIO (herein, "Petitioner" or "Union") seeks to represent a unit of all plant clerical employees including the production planner and warehouse clerk; excluding all office clerical employees, accounting, IT and customer service employees, all non-clerical plant employees, CFO, Customer Relations Manager, managers, guards, and supervisors as defined in the Act.

¹ The names of the parties appears as amended at the hearing.

² The positions of the parties as stated at the hearing and in their briefs have been carefully considered.

³ The Employer is a corporation engaged in the business of making and selling candied apples and other confections.

Petitioner contends that an all plant clerical unit consists of two employees: Dominic Senese, the production planner, and Angel Gonzalez, whom the petitioner contends is a warehouse clerk. The Employer contends that Angel Gonzalez is not a plant clerical employee, and therefore the Petitioner seeks a one-person unit, which is inappropriate under long standing Board precedent. The Employer further contends that even if Angel Gonzalez was found to be a plant clerical employee, a plant clerical unit limited to Gonzalez and Senese is inappropriate as they lack a community of interest between them and they do not have a separate and distinct community of interest from other employees.

Based on the evidence set forth below, I find that the petitioned for unit is not appropriate. The petitioned for unit is inappropriate because Angel Gonzalez is a not plant clerical employee, leaving only one-person to be included in the petitioned for plant clerical unit based on the instant record and the parties positions. I further find that a plant clerical unit consisting of Senese and Gonzalez is inappropriate because they do not share a community of interest, and based on the record, they do not have a community of interest distinct and separate from the production/shipping and receiving employees.

A. Background⁴

The Employer is engaged in the business of making and selling candied apples and other confections from its facility located at 6300 Gross Point Road, Niles, Illinois. The Employer's production department is on the first floor of the facility. On the second floor, are a variety of offices and cubicles. The Employer's managerial hierarchy consists of President Stuart Sorkin, Director of Finance Carmel Cooke who is responsible for the day-to-day accounting activities, human resources activities, and information technology activities, Chief Operating Officer Bill Henry, and General Manager Leo Grigorio. In addition, the Employer employs Technology Coordinator Rob LaForte and Network Administrator Vinnie Senese to handle information technology matters.

The Petitioner in Case 13-RC-20982 sought to include Senese in an office clerical unit. On June 2, 2003, a Decision and Direction of Election issued in which the Regional Director found that Senese was a plant clerical employee who should be excluded from the office clerical unit. The evidence in the previous hearing showed that Senese has three primary duties at the company: (1) converting sales orders into production requirements by generating material resource planning reports that let the production staff know what products have been ordered, what products need to be made, and when the products need to be made; (2) maintaining production material inventory and investigating discrepancies resulting from production employees not properly accounting for shortfalls in inventory; and (3) ordering supplies and making recommendations to Grigorio regarding the purchase of production materials.

While Senese spends about 80% to 90% of his time at his computer terminal preparing and reviewing production data, he regularly spends about 10% to 15% of his

⁴ See *Affy Tapple, LLC & Teamsters Local Union 777*, Case 13-RC-20983 (NLRB Region 13, June 2, 2003) (Decision and Direction of Election).

time on the production floor and 5% of his time working with Grigorio. The evidence showed that he spends a substantial portion of his time working closely with Grigorio and the production supervisors in order to complete his duties. Senese receives a bi-weekly salary of \$2, 417.70 and is eligible to participate in the Employer's health insurance and 401(k) plan. He testified that he reports directly to Chief Operating Officer Bill Henry.

B. Angel Gonzalez

Angel Gonzalez has worked for the Employer for approximately two years. Gonzalez is currently a laborer in the shipping and receiving department and is supervised by the production/shipping and receiving supervisor, Angus E. Gray. As a laborer in shipping and receiving, one of Gonzalez's primary duties is to retrieve production material using a forklift and transferring the material to the staging area in the shipping and receiving department. Once the material is placed in the staging area, Gonzalez verifies that the bill of lading matches the amount of product that will be shipped. The bill of lading is prepared by Sherrie Robinson, an office worker, and placed on Gonzalez's desk. Gonzalez is not responsible for insuring the accuracy of the bill of lading. After verifying that the quantity of the order is accurate, Gonzalez uses the forklift to load the product onto semi-trucks. The truck drivers sign the bill of lading and verify that the quantity is accurate. Gonzalez signs the bill of lading as well, in order to verify that the material was shipped. He then places the bill of lading in a bin on his desk. The bill of lading is either picked up by or taken to Robinson. Jesus Gomez, Augustine Lopez, and Angus C. Gray who are workers at the Company also have authority to sign the bills of lading.

Gonzalez is also responsible for unloading and storing deliveries that are brought into the shipping and receiving area and entering delivery information into a receiving logbook. After a delivery, Gonzalez handwrites the quantity, temperature of the trailer, condition of the products, trailer number, and date into the logbook. Angus C. Gray, a laborer in the shipping and receiving department, also has the authority to enter information into the logbook. The amount of deliveries received by the company range from 15 times a day during the busy season, to 4 times a week during a slow period. Gonzalez's duties include instructing the truck drivers to pull into an available dock. After the truck has pulled into the appropriate bay, Gonzalez unloads the product with his forklift and moves it to the staging area. Once the product is in the staging area, Gonzalez signs the shipping invoice after verifying that the amount of product delivered and the invoice correspond. Gonzalez is responsible for transferring the delivered product to its proper area within the warehouse or production floor. The invoice is placed in the receiving bin on his desk and is either picked up by or taken to Robinson. Gonzalez does not participate in the preparation or processing of the shipping invoice.

In addition to performing labor duties in the shipping and receiving department, Gonzalez spends a significant portion of his time assisting workers in the production department. Gonzalez transfers material from the warehouse to the production area, he helps the workers pack boxes, he assists the maintenance department by moving machines that are to be repaired, and helps the sanitation department by removing

materials from the warehouse racks and cleaning the shelves. Every morning, Gonzalez and Gray walk the perimeter of the Company to make sure that the facility is clean. At least 2-3 times a week, Gonzalez assists in the production process by loading the chocolate into the melters, putting peanuts in the peanut hopper, and cleaning the kitchen. While Gonzalez spends about 20% of his time doing paperwork, 80% of his workday is spent operating the forklift. Gonzalez does not have access to a computer in any of his duties.

Gonzalez is not responsible for monitoring and maintaining inventory levels of production materials. If during the course of the day Gonzalez notices that inventory levels are low, he informs Gray or Senese of the shortage. He occasionally is asked to count how many boxes are in the warehouse and inform Senese or Gray of the amount. Gonzalez does not order supplies or materials for the Employer. Approximately 70 times a year, Gonzalez calls UPS and requests that they pickup an order for delivery.

It is undisputed that Gonzalez does not have any involvement in the performance of the following job duties: timecard collection and transcription of sales orders to forms in order to facilitate production.

C. Legal Analysis

The key determination of whether a unit is appropriate under Section 9(a) of the Act for the purposes of collective bargaining is whether the employees in the proposed unit have a sufficient community of interest. *Washington Palm, Inc.*, 314 NLRB 1122 (1994). To determine the community of interest among employees in a proposed unit, the Board commonly examines the following factors: the similarities or differences of duties and skills of the employees in the proposed unit; the degree of integration among the various groups or classifications of employees; commonality of supervision; interchangeability and contact among employees; and similarity or differences in general working conditions and fringe benefits. *Id.*, 314 NLRB at 1127; see also, *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

In the instant case, I find that a two-person unit consisting of Gonzalez and Senese is not an appropriate unit based on this record. The unit is inappropriate for the following two reasons: (1) Gonzalez and Senese do not share a sufficient community of interest between them; and (2) they do not have a community of interest that is separate and distinct from the other production/shipping and receiving employees.

The record in the instant case establishes that Gonzalez and Senese do not share a community of interest. Gonzales is supervised by Angus E. Gray, while it appears that Senese reports directly to Chief Operating Officer Bill Henry. Senese's position requires different skills and qualifications than Gonzalez's position. Gonzalez spends most of his day driving a forklift and working directly with the production workers. Senese's primary function is to ensure the accuracy of the Employer's production standards by generating production reports, monitoring inventory, and determining which materials need to be purchased. The fact that Gonzalez informs Senese that materials have run out

or assist in counting the materials that are stored in the warehouse is only incidental. While it is true that Gonzalez signs bills of lading, shipping invoices, and records information into the receiving logbook, this simply consists of routine counting and acknowledgment of delivery. The Union contends that because Senese and Gonzalez receive higher wages than the production workers, receive the same employment benefits and do not eat their lunch in the cafeteria that they share a community of interest, I find that these factors do not outweigh the differences, which point to a separate and distinct community of interest.

Gonzalez and Senese do not have a community of interest that is separate and distinct from the other production/shipping and receiving employees. Gonzalez spends a significant portion of his day operating the forklift in order to assist the production workers by transporting materials throughout the warehouse and retrieving and delivering production material to the production line. Occasionally, Gonzalez works on the production line himself. For example, he packs material into boxes, loads chocolate into the melters, and refills the peanut hopper. During the Employer's busy season, Gonzalez's assistance in the production process is considered so vital that delivery trucks have to wait in the shipping and receiving area until he finishes his duties in the production department before they are unloaded. Senese spends approximately 15% of his time working with the production department and assisting the production staff. The rest of his workday is spent generating and reviewing production reports in order to maximize efficiency in the production department.

Furthermore, even assuming *arguendo* that a plant clerical unit was appropriate, it is the opinion of the undersigned that Gonzalez is not a plant clerical employee. The record establishes that Gonzalez does not perform any of the typical plant clerical duties relating to timecard collection, transcription of sale orders to forms to facilitate production, maintenance of inventories, and ordering supplies. *Hamilton Halter Co.*, 270 NLRB 331 (1984). The Petitioner seeks a two-person plant clerical unit of a production planner and warehouse clerk. As discussed above, Gonzalez signs bills of lading, shipping invoices, and enters delivery information into the receiving log book; however, I do not find that these tasks make him a plant clerical as Petitioner asserts. The record shows that these tasks are a minimal part of his overall duties and are merely incidental. As he is not a plant clerical employee, based on the record and the parties' positions, an election cannot be directed in a plant clerical unit because it includes only one employee.

CONCLUSION

Based upon all the evidence, I find that Angel Gonzalez and Dominic Senese do not share a community of interest, they do not have a community of interest that is separate and distinct from the production/shipping and receiving employees, and that Gonzalez is not a plant clerical employee. I conclude that the petitioned for bargaining unit herein is a one-person unit, and, in accordance with *Roman Catholic Orphan Asylum of San Francisco, d/b/a Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1997), it would be contrary to Board policy to certify a single person unit. Therefore, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570.** This request must be received by the Board in Washington by July 25, 2003.

DATED July 11, 2003 at Chicago, Illinois.

/s/Elizabeth Kinney
Regional Director, Region 13

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